

**(1976) 02 AHC CK 0018****Allahabad High Court****Case No:** Sales Tax Reference No. 435 of 1973

Banwari Das Ganpat Lal

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

**Date of Decision:** Feb. 23, 1976**Acts Referred:**

- Uttar Pradesh Sales Tax Act, 1948 - Section 11(1)
- Uttar Pradesh Trade Tax Act, 1948 - Section 13

**Citation:** (1976) 38 STC 345**Hon'ble Judges:** R.M. Sahai, J; C.S.P. Singh, J**Bench:** Division Bench**Advocate:** Bhartji Agarwal, for the Appellant; The Standing Counsel, for the Respondent**Final Decision:** Dismissed**Judgement**

R.M. Sahai, J.

The assessee, a dealer in brassware and non-ferrous metals, disclosed his turnover for the year 1963-64 at Rs. 3,24,500. The assessing authority enhanced the turnover to Rs. 3,90,000 against which the assessee filed appeals and revisions but no success. The application u/s 11(1) of the U. P. Sales Tax Act was dismissed. This court in an application u/s 11(4) directed the Judge (Revisions) to submit a statement of case on the following question :

Whether, on the facts and in the circumstances of the case, there was any relevant material for rejecting the assessee's account books ?

2. The assessee did not maintain any manufacturing account as required under Rule 72(2) nor did he produce any stock register maintained for manufactured goods and for raw material. Admittedly, there was a difference in the turnover as per returns and as per books. The assessee's shop was surveyed twice-once on 30th October, 1963, and the second time on 17th December, 1964. In the first survey, the stocks

were admitted to be of Rs. 20,000. The assessing authority found that, according to the disclosures made by the assessee, the stocks according to the books of account on 17th November, 1963, were worth Rs. 70,659.50. There was thus a disparity of nearly Rs. 60,000 between the return version and the book version. The assessing authority asked the assessee to explain this disparity, but he could not give any satisfactory explanation. His statement that stocks were given by estimate at the time of survey did not inspire confidence. The second survey was made at 1.30 p. m. and, at that time, no entries were found recorded in the rokar for that day. The dealer refused to open the safe and permit the surveying officer to get the cash counted in his presence. It was in these circumstances that the assessee's account books were rejected.

3. The question that has been raised by the counsel for the assessee are twofold-firstly, that the survey dated 17th December, 1964, was not relevant for the assessment year in dispute. It was further urged that the courts below have erred in rejecting the account books merely because the account books were not maintained as required under Rule 72(2). He has placed reliance on a case reported in Commissioner of Sales Tax, U.P., Lucknow v. Khera Shoe Co., Agra 1974 U.P.T.C 326 for this proposition. He has also contended that merely because the assessee refused to open the safe, the courts below were not justified in law in drawing an inference against him. It was further urged that, in the absence of any positive material on the record, the authorities were not justified in rejecting the account books. So far as the survey dated 17th December, 1964, is concerned, there can be no doubt that it was not relevant for the year 1963-64. But the authorities below have not considered the survey for rejecting the account books. An inference has been drawn by the conduct of the assessee. There is no dispute that the Evidence Act does not apply to the proceedings under the Sales Tax Act, but the Tribunal constituted under the statute can very well rely on presumptions or can draw inferences from circumstances which a reasonable man is entitled to draw. Section 13 of the Sales Tax Act casts a duty on the assessee to produce the account books whenever demanded by a surveying officer. In performance of the statutory duties, if the surveying officer visits the shop of the assessee and he is denied the assistance of either looking into the account books or examining the material, which is relevant for determining whether the assessee is maintaining his account books properly or not or is trying to evade payment of tax, then a reasonable inference can be drawn that the assessee is trying to conceal the best possible evidence. In this case, in our opinion, the courts below have from the conduct of the assessee rightly drawn an inference against him. Moreover, this is not the only ground on which the account books have been rejected. This has been taken to be a corroborating circumstance and it is only the cumulative effect of the other circumstances taken together which has led the courts below to reject the account books. In the circumstances, we are of the opinion that no exception can be taken. It was strenuously urged that in view of the Division Bench decisions given by this Court,

the authorities acted erroneously in rejecting the account books for non-maintenance of it in accordance with Rule 72(2). The finding recorded in this case is that the accounts maintained by the assessee are not verifiable. It is open to the assessee to maintain his account books in any manner he considers proper, but, at the same time, it is a duty cast on him to maintain them in such a manner that it can be scrutinised and examined at any moment by a surveying officer or by the assessing authority and the manner must be such as to create confidence regarding its authenticity. None of the authorities cited by the counsel for the assessee lay down that the account books cannot be rejected even when they are not maintained in such a manner that they cannot be verified. The courts below have further found that there is discrepancy in the return version and the book version. It has not been pointed out to us that this is incorrect. In our opinion, all these circumstances were sufficient for rejection of the assessee's account books.

4. For the reasons stated above, we are of the opinion that the question referred to us should be answered in the affirmative against the assessee and in favour of the department. Our answer is that, in the facts and circumstances of the case, there was relevant material for rejecting the assessee's account books. The department shall be entitled to its costs, which we assess at Rs. 100.